

DOE 2200.2B
6-9-92

DOE 2200.2B, COLLECTION FROM CURRENT AND FORMER EMPLOYEES FOR INDEBTEDNESS TO THE UNITED STATES

This page must be kept with DOE 2200.2B, COLLECTION FROM CURRENT AND FORMER EMPLOYEES FOR INDEBTEDNESS TO THE UNITED STATES. The subject directive has been revised to reflect, in addition to organizational title, routing symbol, and other editorial revisions required by SEN-6, recently published General Accounting Office waiver regulations pertaining to the implementation of Public Laws 99-224 and 100-702. No other substantive changes have been made.

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 2200.2B

Approved: 06-09-92

This directive was reviewed and certified as current and necessary by (Enter Name), (Enter Title) Director, Office of Management, Budget and Evaluation/Chief Financial Officer, XX-XX-XXXX.

SUBJECT: COLLECTION FROM CURRENT AND FORMER EMPLOYEES FOR INDEBTEDNESS TO THE UNITED STATES

1. PURPOSE. To prescribe the policy and procedures for (a) collecting debts owed by current and former Department of Energy (DOE) employees to the United States Government, subject to the limitations detailed in paragraph 6 below; (b) compromising, suspending, or terminating such debts; and (c) the waiver of claims against employees resulting from erroneous payment of pay or allowances, travel, transportation and relocation expenses and allowances.
2. CANCELLATION. DOE 2200.2A, COLLECTION FROM CURRENT AND FORMER EMPLOYEES FOR INDEBTEDNESS TO THE UNITED STATES, of 3-17-89.
3. REFERENCES.
 - a. Public Law 97-365, Debt Collection Act of 1982, which requires increased efficiency of Government-wide efforts to collect debts and provides additional procedures for the collection of debts owed the United States.
 - b. Title 4 Code of Federal Regulations (CFR), Parts 91-93, which prescribe the standards for waiver of claims for erroneous payment of pay and allowances, travel, transportation and relocation expenses and allowances.
 - c. Title 4 CFR 101-105, Federal Claims Collection Standards, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 United States Code (U.S.C.) 3711(e)(2), which prescribe standards for the administrative collection, compromise, termination of agency collection, and referral of debts to the General Accounting Office for review and guidance, and the Department of Justice for litigation of civil claims for money or property by the Federal Government.
 - d. Title 10 CFR 1015, Collection of Claims Owed the United States, which implements for DOE the provisions of the Debt Collection Act of 1982, as reflected in the Federal Claims Collection Standards, 4 CFR 101-105.
 - e. Title 5 U.S.C. 5514, as amended, and 5 CFR 550.1101-1108, subpart K, which authorize collection by installments, after proper notification, of amounts that an employee owes the United States Government after a determination is made by the head of a department or agency, or designee, that a debt is valid and overdue.
 - f. Title 5 U.S.C. 5584, as amended, which grants the Comptroller General, and in limited circumstances agency heads, the authority to waive collection of

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erroneous payments made to civilian employees and members of the armed services.

4. DEFINITIONS.

- a. Agency includes any executive agency or independent establishment in the executive branch as defined by 5 U.S.C. 105, the U.S. Postal Service, the U.S. Postal Rate Commission, and the military departments as defined by 5 U.S.C. 102.
- b. Administrative Charges are those amounts assessed by DOE to cover the costs of processing and handling delinquent debt due the Government.
- c. Creditor Agency is the agency to which a debt is owed.
- d. Current Pay Account can include basic pay, special pay, incentive pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay.
- e. Debt describes an amount of money owed to the United States from: loans insured or guaranteed by the United States; fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines, and forfeitures; and other claims and similar sources.
- f. Delinquent Debt designates a debt which has not been paid by the date specified in the creditor agency's initial written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date. In addition, a debt is delinquent if the debtor fails to satisfy obligations under a payment agreement with the creditor agency.
- g. Disposable Pay describes that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105(b) through (f) to determine disposable pay subject to salary offset.
- h. Employee is an individual currently employed in a Federal agency including a current member of the Armed Forces or a Reserve of the Armed Forces.
- i. Federal Salary Offset Program is a program designed to identify Federal employees who are delinquent on their debts to the Government; notify the Federal employing agency; and collect the debt in full or bring the debtor into repayment status.
- j. Interest Rate is the percentage rate based on the current value of funds to the Department of the Treasury to be used in assessing interest charges for outstanding debts owed the Government under the Debt Collection Act of 1982 (Public Law 97-365 and 31 U.S.C. 3717) as prescribed in the Treasury Financial Manual bulletins. An agency may assess a higher rate of interest if it

reasonably determines that a higher rate is necessary to protect the interest of the United States. The rate of interest in effect at the date that interest begins accruing shall be the rate charged and it remains fixed for the duration of the indebtedness unless a different rate is prescribed in a repayment schedule.

- k. Other Administrative Offset Collections include amounts offset against payments due a former employee from lump-sum leave payment, severance pay, and the Civil Service Retirement and Disability Fund under 31 U.S.C. 3716 and amounts offset under a preexisting statute which authorizes offset in particular situations but does not provide its own due process procedures.
 - l. Paying Agency is the agency employing the individual and disbursing his or her current pay account.
 - m. Penalties are assessments of 6 percent per annum, in addition to interest, for failure to pay any portion of a debt more than 90 days past due.
 - n. Salary Offset is an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.
 - o. Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.
5. POLICY. It is Departmental policy to collect from current and former employees the amount of any indebtedness that they have to the United States. It is also DOE's policy to assess and collect, in addition to the debt, all interest and penalty charges on overdue debt and administrative costs associated with collection of the debt in accordance with 4 CFR 102.13 and 10 CFR 1015.4.

6 LIMITATIONS.

- a. Excluded Debts or Claims. The procedures contained in this Order do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States; or to any case in which collection of a debt by administrative offset is explicitly provided for or prohibited by statute.
- b. Travel Advances and Employee Training Expenses. Authority to recoup travel advances and training expenses by administrative offset is provided by 5 U.S.C. 5705 and 5 U.S.C. 4108, respectively. However, the due process procedures described on page 19, paragraph 15c, must be provided prior to effecting collection by offset under one of the referenced statutes.
- c. An Employee's Election of Coverage or a Change in Coverage Under a Federal Benefit Program and/or Administrative Pay or Allowance Adjustments. An employee's election of coverage or a change in coverage under a DOE benefit program that requires periodic deductions from pay and that cannot be placed

into effect immediately because of normal processing delays is not considered a debt under this Order if the amount to be recovered was accumulated over four pay periods or less. The employee's future pay will be reduced to cover the period between the effective date of election and first regular withholding. The employee may dispute the amount of the retroactive collection by notifying the person responsible for resolving the disputed amount (see page 5, paragraph 7b(11)).

- d. Employee's Payment of Health Benefits Premiums for Periods of Nonpay Status or Insufficient Pay. The employee shall receive notice in advance of collection for past due health insurance premiums upon return to a pay status or receipt of sufficient pay. The employee's future pay will be reduced by an amount not to exceed 25 percent of disposable pay, unless the employee requests a higher amount, or the expected period of continued employment is such that a higher rate is needed to complete recovery in the number of installments available. See Federal Personnel Manual Letter 890-30 of 8-5-82.

7. RESPONSIBILITIES.

- a. The Chief Financial Officer (CFO) shall develop and maintain Departmental policies and procedures for (1) the collection of indebtedness from current and former DOE employees indebted to the United States; (2) the compromise, suspension, or termination of collection actions involving employee debt under the Federal Claims Collection Standards, 4 CFR 103 and 104; and (3) the waiver of erroneous payments of pay and allowances, and of travel, transportation and relocation expenses and allowances.
- b. The Chief Financial Officer and Heads of Field Elements or Designees shall:
- (1) Determine the existence and amount of employee debt.
 - (2) Promote voluntary repayment of employee debts, whenever possible, using demand letters (three progressively stronger written demands prior to offset will normally be made unless a response or other information indicates that a further demand would be futile or unnecessary) specifying the origin, nature, and amount of the debt; stating the Department's policy for charging interest and other fees; specifying the date by which payment is due; providing the employee a chance to discuss alternative methods of repayment; and informing the employee, when applicable, of his or her right to request waiver of erroneous payments of pay and allowances, and of travel, transportation and relocation expenses and allowances.
 - (3) Ensure that current and former employees are provided with due process procedures when amounts owed the Federal Government will be recouped through salary offset under 5 U.S.C. 5514, or other administrative offset collections, in accordance with the procedures outlined on pages 6 through 20, paragraphs 8 through 15.
 - (4) Forward the employee's debt file to the chief counsel (at Headquarters GC-43) for a review of legal sufficiency before sending a third written

demand to the debtor. The debt file of the employee debtor should be forwarded to the appropriate chief counsel for review if it is believed that an oral hearing is required due to issues of credibility or veracity.

- (5) Arrange for the services of a hearing official when a hearing is requested. When requested, the Chairman of the Board of Contract Appeals will designate a hearing official unless the Chairman determines that provision of a hearing official would be inconsistent with other duties under the Contract Disputes Act of 1978. The Chairman may designate a member (Administrative Judge) of the Board or other professionally qualified person who, likewise, is not subject to the supervision or control of the Secretary.
 - (6) Be mindful of the statute of limitations for commencement of administrative offset action against a debtor (10 years) in order to protect the Government's interest (4 CFR 102.3(b)(3)).
 - (7) Certify the debt amounts collected as set forth on page 17, paragraph 13c and certify that an employee owes a debt as set forth on page 17, paragraph 13d.
 - (8) Compromise or suspend or terminate collection action on employee debts that do not exceed \$20,000 in accordance with 10 CFR 1015.5(c).
 - (9) Recommend compromise or suspension or termination of collection action on employee debts that exceed \$20,000 to the Department of Justice in accordance with 10 CFR 1015.5(d).
 - (10) Act upon employees' requests for waiver of collection of claims involving erroneous payments of pay and allowances, travel, transportation and relocation expenses, and allowances in accordance with 4 CFR 91-93. In accordance with those regulations, grant waivers in whole or in part for amounts not exceeding \$1,500 and deny waiver of any amount provided that in cases where the amount is more than \$1,500, advise the employee of his or her right to appeal the denial to the Comptroller General of the United States. See page 20, paragraph 16.
 - (11) Seek resolution for employees disputing the amount of retroactive collection of overpayments arising due to normal processing delays.
 - (12) In coordination with the General Counsel or chief counsel, refer doubtful claims to the Department of Justice or GAO, as appropriate, and promptly refer claims for which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor to the Department of Justice. (See DOE 2200.6, FINANCIAL ACCOUNTING, Chapter III, Receivables, paragraph 5e for additional information.)
- c. General Counsel (GC-43) at Headquarters and Chief Counsels in the Field shall certify that due process as specified in paragraph 8 below was given to a former employee when the debt claim is resubmitted to another agency for

collection. A review for legal sufficiency shall be made of an employee's debt file when the file is submitted due to unanticipated hearing or review.

- d. Inspector General (IG) shall provide a report and supporting documentation for a claim resulting from an IG investigation of an employee to the CFO or Head of Field Element at the time the appropriate management official and/or employee is provided same (see page 23, paragraph 17).

8. DUE PROCESS PROCEDURES FOR SALARY OFFSET UNDER 5 U.S.C. 5514. An independent review shall be performed by the cognizant paying finance office to determine whether an employee is indebted to the Department for debts requiring repayment. If it is determined that the employee is indebted to DOE, the employee shall be provided with prompt written notice of the indebtedness. A minimum of 30 calendar days from date of receipt by the employee must be allowed prior to collection. A letter shall be delivered in person or by certified or registered mail, return receipt requested with receipt retained as proof of delivery, and shall state the following:

- a. That a debt is owed, including the origin, nature, and amount of that debt.
- b. The intention to collect the debt by means of deduction from the employee's current pay account.
- c. The amount, frequency, approximate beginning date, and duration of the intended deductions.
- d. The requirements concerning interest, penalties, and administrative costs.
- e. The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records that form the basis for the debt determination.
- f. That amounts paid or deducted for the debt which are later found not owed to DOE will be promptly refunded including any interest or other charges collected from the employee. DOE has no authority to pay additional interest on the amount collected.
- g. That the employee has the right to a hearing conducted by a hearing official, not under the control or supervision of the Secretary, upon petition for such hearing by the individual on or before the 15th day following receipt of the notice of indebtedness.
- h. That the employee must provide to the CFO or Head of Field Element or designee not later than 10 calendar days prior to the date of the oral hearing, information as outlined on page 9, paragraph 10f.
- i. That an employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceedings.

- j. That the timely filing of a petition for hearing will stay the commencement of collection proceedings, but failure to meet deadline dates could result in salary offset as provided on page 15, paragraph 11.
- k. That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings.
- l. That the employee may establish a schedule for the voluntary repayment of the debt or enter into a written agreement to establish a schedule for the voluntary repayment of the debt in lieu of the offset. The agreed upon schedule must be in writing, signed by both the employee and the designated DOE representative, and documented in DOE files (5 CFR 550.1104(d)(6)).
- m. That any knowingly false or frivolous claim or statements, representations, or evidence may subject the employee to:
 - (1) Disciplinary procedures appropriate under chapter 75 of title 5 U.S.C. and 5 CFR 752.
 - (2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731.
 - (3) Criminal penalties under 18 U.S.C. 286, 1001, and 1002.
 - (4) Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-12 and 10 CFR 1013.
- n. That payment made under protest for all or any portion of the debt will not be considered a waiver of rights to inspect and copy Government records related to the debt determination and the right to a hearing.

9. HEARING REQUESTS AND ARRANGEMENTS UNDER 5 U.S.C. 5514.

- a. When a hearing has been requested, the employee must be:
 - (1) Notified in writing of the time, date, and location of the hearing; and
 - (2) Provided with the opportunity to inspect and copy the records and other evidence upon which DOE based its determination of indebtedness.
- b. Arrangements will be made for the services of a hearing official to conduct the hearing. (See page 5, paragraph 7b(5).)
 - (1) The hearing may not be reconducted by an individual under the control or supervision of the Secretary, except that nothing shall be construed to prohibit the use of an administrative judge.
 - (2) The hearing official shall be directed to issue a final decision at the earliest practicable date, but not later than 60 days after the filing of

the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings or the hearing official concludes that circumstances of an unusual nature necessitate a delay in the proceedings.

- c. Late hearing requests may be accepted if the employee can show that the delay was due to circumstances beyond his or her control or failure to receive notice of the time limit.

10. HEARING PROCEDURES UNDER 5 U.S.C. 5514.

- a. Type of Hearing. The CFO or the Head of the employee's Field Element will make arrangements to provide the debtor with either an oral hearing or a paper hearing which is a review based on written submissions. (See 4 CFR 102.3(c).)

- (1) A hearing shall be provided to the debtor, upon request, when the debt will be involuntarily offset against the debtor's current pay account and DOE is the creditor agency. The type of hearing to be provided shall be:

- (a) A review of the written records submitted, if the determination of indebtedness does not involve issues of credibility or veracity; or

- (b) An oral hearing, if issues of credibility or veracity are involved.

- (2) An employee may waive his or her entitlement to an oral hearing and request a review of the case by the hearing official on the basis of written submission only. The debtor will then be accorded a paper hearing; that is, the hearing official will make a determination based on a review of the written record.

- b. Entitlement to Hearing.

- (1) Upon request and under the circumstances set forth in paragraph 10a(1), an opportunity for a hearing shall be provided to an employee for the determination of the existence or the amount of the debt and/or the determination of a repayment schedule if the schedule was not established by written agreement between the employee and the Department.

- (2) When a debt has been reduced to a judgment against the employee by a Federal court, the hearing will be limited to the nature of the repayment schedule, provided it was not established by written agreement between the employee and the Department or by a court order.

- c. Petition for a Hearing.

- (1) An employee's written petition for a hearing must be submitted on or before the 15th day following receipt of the notice of indebtedness described on page 6, paragraph 8g. Headquarters employees must address the petition to the CFO. Employees at field elements must address the petition to the Heads of their respective Field Elements. The written petition must state

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why the employee believes the determination of the Department concerning the existence or the amount of the debt is in error.

- (2) The employee's written petition must be signed by the employee and shall describe with reasonable specificity and brevity the facts, evidence, and testimony of known witnesses, who the employee believes support his or her position. If the employee is to be provided an oral hearing and the employee elects to waive that oral hearing, the employee shall state specifically that the right to an oral hearing is waived and a hearing on the basis of written submission is elected.
 - (3) Upon receipt of a timely petition for hearing, the CFO or the Head of a Field Element, or designee shall forward to the employee and to the hearing official, within 7 calendar days, copies of the evidence and records which form the basis for the determination of indebtedness.
- d. Petitions for a Hearing Made After Time Expires. A petition for a hearing will be accepted after the expiration of the 15-day time period, provided the employee shows to the satisfaction of the CFO or the Head of the Field Element that the delay was caused by circumstances beyond the employee's control.
- e. Delay of Salary Offset. If an employee files a petition for a hearing and the hearing is granted, action to begin recovery of the debt through salary deduction will be deferred until after a decision is rendered by the hearing official. However, interest will accrue from the date of notice of intention to collect the debt. Interest accrual must be suspended upon receipt of the employee's petition for a hearing. Interest accrual shall be resumed on the date a decision adverse to the debtor is reached. See page 14, paragraph 10n.
- f. Prehearing Submissions for Oral Hearings.
- (1) Not later than 10 calendar days prior to the date of the oral hearing, the employee shall file the following information with the CFO or the Head of the employee's Field Element and the hearing official:
 - (a) If the employee contests the Department's determination of the existence or amount of the debt:
 - 1 A statement of the reasons why the employee does not agree with DOE's determination of the existence or amount of the debt. The statement shall include all pertinent facts on which the employee relies to support his or her assertion and any arguments supporting that assertion;
 - 2 A list of witnesses the employee will call at the hearing and a summary of their anticipated testimony; and
 - 3 A copy of the records that the employee intends to introduce at the hearing, if they differ from the ones provided by the Department.

- (b) If the employee contests the Department's salary offset schedule:
- 1 A proposed alternative salary offset schedule;
 - 2 A statement of the reasons why DOE's proposed salary offset against disposable pay will produce an extreme financial hardship;
 - 3 Supporting documents for the 1-year period preceding the notice for the employee and his or her spouse and dependents and for the repayment period proposed by the employee as an alternate salary offset schedule, including:
 - a Income from all sources;
 - b Assets;
 - c Liabilities;
 - d Number of dependents and dates of birth;
 - e Expenses for food, housing, clothing, and transportation;
 - f Medical expenses; and
 - g Exceptional expenses, if any.
 - 4 A list of witnesses the employee intends to call at the hearing and a summary of their anticipated testimony; and
 - 5 A copy of the records that the employee intends to introduce at the hearing, if they differ from those in paragraph 10f(1)(b) 3 above or from those provided by the Department.
- (2) Not later than 10 calendar days prior to the date of the oral hearing, the CFO or the Head of the employee's Field Element, or designee shall provide the employee and the hearing official with the following information:
- (a) A list of witnesses that the Department intends to call at the hearing;
 - (b) A summary of their anticipated testimony; and
 - (c) Any additional evidence not previously transmitted to the employee which DOE believes is relevant and material.

g. Oral Hearing.

- (1) The hearing will be conducted by a hearing official who is not under the control or supervision of the Secretary. An administrative law judge may be employed. (See page 7, paragraph 9b.)
- (2) The hearing will be scheduled not earlier than 30 days after the request for a hearing.
- (3) A summarized record of the hearing shall be made.
- (4) All evidence which is relevant and material will be admissible; however, formal rules of evidence will not be employed.
- (5) Witnesses shall testify under oath and are subject to cross-examination.
- (6) At the hearing, DOE bears the burden of first presenting evidence on relevant issues. The employee then presents his or her evidence regarding these issues. The DOE may offer evidence rebutting the evidence introduced by the employee. The employee, where appropriate, may offer evidence insurrebuttal to DOE.

h. Review Based on Written Submission for Paper Hearing.

- (1) The review will be conducted by a hearing official who is not under the control or supervision of the Secretary where offset is expected to be made from the current salary account. An administrative judge may be employed for this purpose.
- (2) The review may be conducted by an official under the control and supervision of the Secretary where offset is expected to be made by other administrative offset and the requirements for an oral hearing on page 8, paragraph 10a(1), are not present.
- (3) The date for written submissions will be set not earlier than 30 days after the request for review by written submission.
- (4) All evidence which is relevant and material will be admissible.
- (5) Testimony of witnesses will be by affidavit under oath or affirmation.
- (6) The hearing official will require that written submission be received on the date set for submission. Each party will also provide the opposite party with a copy of its submission at the same time as it is submitted to the hearing official .
- (7) Each party has 7 calendar days from the date of submission to file with the hearing official rebuttal evidence to the written submission.

- i. Federal Rules of Civil Procedure. Motion practice, written interrogatories, depositions, or petitions for extraordinary relief will not be permitted under this Order. Additionally, Federal Rules of Evidence are not permitted under this Order. Prehearing submissions will be limited to that described on page 9, paragraph 10f.
- j. Representation.
 - (1) An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceedings. If the debtor chooses another employee of the DOE as a representative and that person is willing to serve, the representative's supervisor may disallow the employee's choice of representative on the basis of:
 - (a) Priority needs of the DOE mission. For instance, it is not intended that anyone employee serve as a representative when doing so repeatedly would interfere with the priority needs of the DOE mission:
 - (b) Unreasonable cost to DOE; or
 - (c) Conflict of interest or conflict opposition.
 - (2) The debtor may challenge a decision to disallow the choice of representative by forwarding the challenge to the representative's supervisor at the next higher level in the management chain who was not involved in the original decision to disallow the representative.
 - (3) The DOE will not designate a representative for an employee, nor will the DOE require any employee or individual to serve as a representative of another. If a debtor requests assistance in obtaining representation, the servicing personnel office will make available to the debtor information concerning sources of assistance. All arrangements for a representative must be made by the debtor.
 - (4) DOE will not compensate the debtor for representation expenses incurred. This includes hourly fees for attorneys or other representatives, travel expenses, reproduction of documents, or other related expenses. DOE attorneys will not be provided as representatives for the debtor.
- k. Use of Official Time.
 - (1) An employee and the employee's representative (if employed by the DOE) are entitled to a reasonable amount of official time to prepare for the hearing. The amount of official time is limited to the time required to obtain information, interview witnesses not otherwise available during nonwork hours, and attend related formal meetings.

- (2) The employee and the representative (if employed by the DOE) shall be permitted official travel time to attend the hearing, and travel time shall not be charged to leave.
- (3) In no case will the employee or representative be granted official time or official travel time except as provided in subparagraphs 10k(1) and(2) above.

I. Applicable Legal Principles.

- (1) If the existence or amount of the debt is contested, a decision in favor of the Department shall be issued by the hearing official if he or she finds that the Department has shown by a preponderance of the evidence the existence or amount of the debt.
- (2) If the hearing official finds that a debt exists, but DOE has failed to show by a preponderance of the evidence the amount of the debt, the hearing official shall adjudge the amount of indebtedness as established by the evidence presented at the hearing.
- (3) In determining whether DOE's determination of the existence or amount of the employee's debt was established by a preponderance of the evidence the hearing official is governed by Federal statutes and regulations giving rise to the debt and by State law, if relevant.
- (4) If the offset schedule is contested, the hearing official shall uphold the original schedule unless the employee demonstrates by clear and convincing evidence that the payments called for in the offset schedule will produce an extreme financial hardship for the employee.
- (5) If the hearing official finds that the payments called for under the Department's offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time possible without producing an extreme financial hardship for the employee.
- (6) The hearing official may not find that the Department has failed to establish the existence or amount of the employee's debt by a preponderance of the evidence on the basis of State or local statutes of limitations.
- (7) In the case of any employee of the Federal Government who is indebted to the United States, as determined by a Federal court in an action or suit brought against such employee by the United States, the hearing official will only consider the nature of the repayment schedule as provided on page 8, paragraph 10b(2). In determining the repayment schedule, the hearing official may permit the amount of the indebtedness to be recolleced in monthly installments or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay account of the individual.

- (a) The deduction may be made only from basic pay, special pay, incentive pay, or in the case of an individual not entitled to basic pay, other authorized pay. Collection shall be made over a period not greater than the anticipated period of employment.
 - (b) Generally, the amount deducted for any period may not exceed 15 percent of disposable pay or in the case of debt determined by a Federal Court, 25 percent of the pay from which the deduction is made, unless the deduction of a greater amount is necessary to make the collection within the period of anticipated employment (Public Law 97-276, Section 124).
 - (c) If the individual retires or resigns, or if his or her employment otherwise ends before collection of the amount of the indebtedness is completed, deduction shall be made from later payments of any nature due to the individual from the United States Treasury. See page 18, paragraph 14c.
- m. Standards for Determining Extreme Financial Hardship. An offset produces an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his or her spouse and dependents. These essential subsistence expenses are limited to costs incurred for food, housing, clothing, transportation, and medical care. In determining whether an offset would prevent the employee from meeting the essential subsistence expenses, the hearing official shall consider:
- (1) The income from all sources of the employee or his or her spouse and dependents;
 - (2) The extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses;
 - (3) Whether these essential subsistence expenses have been minimized to the greatest extent possible;
 - (4) The extent to which the employee and his or her spouse and dependents can borrow and repay the money to meet the offset and other essential expenses; and
 - (5) The extent to which the employee and his or her spouse and dependents have exceptional expenses that should be taken into account, and whether these expenses have been minimized.
- n. Accrual of Interest. Interest accrues from the date of the written notice of the intention to collect the debt, but will be waived if the debt is paid within 30 days from that date. However, interest accrual must be suspended upon receipt of the employee's petition for a hearing.

11. CONSEQUENCE OF THE EMPLOYEE'S FAILURE TO MEET DEADLINE DATES.

- a. An employee waives the right to a hearing or review by written submission and will have his or her disposable pay offset in accordance with the offset schedule, if the employee:
 - (1) Fails to file a petition for a hearing before the deadline date established on page 8, paragraph 10c(1);
 - (2) Is scheduled to appear and fails to appear on time at the hearing; or
 - (3) Fails to file the required prehearing submissions prescribed on page 9, paragraph 10f.
- b. If the employee files the required prehearing submissions after the date established and the hearing official finds that the employee has shown good cause for the failure to comply with the established deadline date, the hearing official may find that an employee has not waived the right to a hearing.
- c. In making the determination under subparagraph b, above, the hearing official shall take into account that the employee was provided a period of time to respond to the Department's position on the same issues.

12. Hearing Decision.

- a. The hearing official will notify the employee and the CFO or the Head of the employee's Field Element of the hearing decision in writing. The decision will be issued at the earliest practical date, but not later than 60 days after the employee files a petition requesting the hearing.
- b. The written decision shall clearly outline the facts evidencing the nature and origin of the debt and the employee's case in rebuttal. Further, it shall include the analysis, findings, and conclusions of the hearing official as to the existence and amount of the debt.
- c. If the hearing official determines that a debt is owed by the employee, deductions shall begin by the method and in the amount stated in the notice of intention to collect from the employee's current pay, unless a different payment schedule is directed by the hearing official.
- d. The decision of the hearing official shall be final and conclusive for purposes of salary offset under 5 U.S.C. 5514.
- e. Upon receipt of the hearing official's decision, the CFO or the Head of the employee's Field Element will take appropriate action to comply with the decision. However, the decision does not preclude the CFO and Heads of Field Elements, or designees, from taking other collection action which is warranted under the circumstances, including (but not limited to) forwarding the case to the General Accounting Office or the Department of Justice.

13. RECOVERY PROCEDURES FOR SALARY OFFSET UNDER 5 U.S.C. 5514.a. Recovery From Employees Indebted to Another Agency or Department, by Virtue of Previous Employment.

- (1) Upon receiving the official personnel folder, a properly certified debt claim, and certification that the due process procedures under 5 U.S.C. 5514 were performed, DOE will resume the collection from the employee's current pay account and notify the employee and the creditor agency of the resumption. DOE will not repeat the due process procedures described by 5 U.S.C. 5514 in order to resume the collection.
- (2) The Department shall return upon receipt any incomplete or improperly certified debt claim from another agency with a notice that procedures under 5 U.S.C. 5514 must be followed and a completed debt claim received before any collection action will be taken to collect from the employee's current pay.
- (3) The Department shall provide the employee with a copy of the certified debt claim received from the creditor agency along with notice of the intent to withhold and make payment. Deductions should be scheduled to begin at the next officially established pay period.

b. Recovery from Employees Indebted to a Major Creditor Agency Under the Federal Salary Offset Program.

- (1) When an employee has been identified as a delinquent debtor and receives a notice from a major creditor agency pursuant to the Federal Salary Offset Program (see page 2, paragraph 4i), the employee has 30 days to request a hearing, voluntarily pay the debt, establish a payment schedule, or make other workable arrangements with the creditor agency. Notification provided by the creditor agency will include instructions regarding the debtor's rights, appeal procedures, and expected repayment requirements.
- (2) If the employee does not make arrangements to pay the debt, the creditor agency will send a notice to DOE to make a salary offset.
- (3) When salary offset notices are received, DOE will verify that the employee is still employed and process the notice as required by 5 CFR 550.1101-1108. DOE payroll offices will notify employees in writing prior to withholding monies from their salary. DOE will not offset more than 15 percent of the employee's disposable pay per pay period unless the employee agrees to a higher amount or unless a Federal Court has determined the employee is indebted to the United States, in which case DOE may offset up to 25 percent of disposable pay (see page 14, paragraph 10I(7)(b)). DOE should initiate offset in the pay period following receipt of the creditor agency request but not later than 30 days after receipt.
- (4) DOE will not assess additional interest, penalty, or administrative charges on debts owed to other Federal agencies.

- (5) DOE will report promptly to the creditor agency that offset will be initiated including the date or pay period when the offset will begin. When reimbursement is made to the creditor agency, DOE must indicate on the SF-1081, "Voucher and Schedule of Withdrawals and Credits," or check that the payment is for salary offset, and for each employee/debtor, the offset amount, the creditor agency's claim number, as well as the employee's name, Social Security Number, and date of payment. Where available, the On-Line Payment and Collection (OPAC) System may be used to transfer payments.
- (6) DOE will immediately notify the creditor agency of pending termination or reassignment actions which will affect the offset arrangements.

c. Recovery of Debts Owed to Another Agency by a DOE Employee Subsequently Transferred or Separated or in the Process of Transferring or Separating.

- (1) If, after the creditor agency or department has submitted the debt claim, the employee transfers to a position served by a different paying agency before the debt is collected in full, the total amount of the collection made on the debt must be certified by the CFO, Head of a Field Element, or a designee, and a copy of the certification furnished to both the employee and the creditor agency together with notice of the employee's transfer. The original of the debt claim and a copy of the certification of the amount which has been collected must be inserted in the employee's official personnel folder, which is provided to the new paying agency.
- (2) If the employee is in the process of separating or is being terminated from the Federal Government, offset will be made from the final salary payment, lump sum leave, or other payments due the employee to the extent necessary to liquidate the debt. The total amount of collection shall be certified and notification sent to the creditor agency and the employee. In the event offset from final pay or other payments is insufficient to liquidate the debt and the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employees Retirement System, or other similar payments, a copy of the debt claim and certification should be sent to the agency responsible for making such payments as notice that a debt is outstanding.

d. Requesting Recovery from Another Agency.

- (1) Submit a debt claim to the paying agency containing the information in paragraphs (2) through (4) below and any installment agreement, if applicable.
- (2) Provide to another agency or department, for employees who transfer or are in the process of transferring, written certification by the CFO, Head of a Field Element, or a designee, that the employee owes the debt and other instructions on the repayment schedule and, if applicable, two copies of any court judgment. General Counsel certification that the employee has been accorded due process rights pursuant to the Debt Collection Act of

1982 shall accompany the debt claim submission. Certification shall be in writing and shall state that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt first accrued, and that Departmental regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management and submitted to the employee's paying agency. If a copy of a court judgment is forwarded, General Counsel need only review the debt claim.

- (3) If the collections are to be made in installments, advise the paying agency of the amount or percentage of disposable pay to recollected in each installment, the number of installments, and the commencing date of the first installment if a date other than the next officially established pay period has been established.
- (4) Indicate the action taken under 5 U.S.C. 5514 and give the date the action was taken to afford the employee the required due process, unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency.
- (5) For a separating or a separated employee who has a debt outstanding because final pay and other amounts were insufficient to cover the debt, DOE shall, upon receipt of notification from the current paying agency, submit a certified claim requesting administrative offset from the Civil Service Retirement and Disability Fund or from other similar monies due and payable to the separated debtor.

14. GUIDELINES FOR COLLECTION OF DEBT.

- a. Collection of Principal Debt, Interest and Penalty, and Administrative Costs. The Department shall assess and collect the principal amount of the debt, all interest and penalty charges, and administrative costs associated with collection of the debt. Interest will be waived if the debt is paid within 30 days after the date of the initial demand. Any other waivers of interest, penalty charges, and administrative costs shall be in accordance with applicable provisions of DOE 2200.6, FINANCIAL ACCOUNTING, Chapter III, "Receivables." The Department prefers to collect such debts with a single voluntary payment. If the current or former employee is financially unable to pay in a single payment, collection maybe accepted in regular installments through payroll deduction. Collection may also be made by involuntary salary offset or other administrative offset, in accordance with this Order, and as consistent with applicable law. If an employee defaults on voluntary payments the debt may still be collected by involuntary salary offset or other administrative offset, but only after again extending due process rights to the employee.
- b. Installment Deductions or Payments. The size and frequency of installment deduction shall bear a reasonable relation to the size of the debt and the employee's ability to pay. The amount deducted through salary offset for any pay period shall not exceed 15 percent of the employee's disposable pay, except

that a greater percentage maybe deducted upon written consent of the individual involved. (See page 14, paragraph 10I(7)(b) for guidelines when collection is based on Federal court action.) Payments less than \$25(\$50 for those employees paid on a monthly basis) shall be accepted only in the most unusual circumstances, such as when payment of a greater amount would impose financial hardship on the debtor. Where possible, the installment payment shall be sufficient to liquidate the debt in 3 years or during the employee's anticipated period of employment, whichever period is shorter. For additional information on installment payments, see DOE 2200.6, FINANCIAL ACCOUNTING, Chapter III, "Receivables."

- c. Separating Employees. If an employee is resigning, retiring, or is being terminated, offset shall be made from any entitlements (e.g., lump sum leave or final salary payment) due the employee from DOE on the date of separation to the extent necessary to liquidate the debt. If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, DOE shall seek other administrative offset (see paragraph 15b) pursuant to 31 U.S.C. 3716 from later payments of any kind (e.g., retired pay or other authorized pay due the former employee from the United States).

15. OTHER ADMINISTRATIVE OFFSET COLLECTIONS.

- a. Current Employees. When an administrative offset will be taken under a pre-existing statute which authorizes offset in particular situations but does not provide its own due process procedures (see page 3, paragraph 6b for examples), the procedures at paragraph 15c below shall be followed.
- b. Separated Employees. If an employee is already separated from the Federal Government, all subsequent payments due from the Department have been paid, and the employee has been provided due process in accordance with the provisions of paragraph 15c below, the Department shall request that the Office of Personnel Management administratively offset from the Civil Service Retirement and Disability Fund, or other similar funds, monies which are due and payable to the separated debtor (31 U.S.C. 3716 and 4 CFR 102.4).
- c. Due Process Procedures.
 - (1) Before initiating collection by administrative offset, the debtor must be provided a minimum of 30 calendar days written notice of the intent to collect by administrative offset. This written notice must be delivered in person or by certified or registered mail, return receipt requested with receipt retained as proof of delivery, and shall state the following:
 - (a) The nature and amount of the debt;
 - (b) The payment due date;
 - (c) The intention to collect the debt by means of offset;

- (d) The debtor's right to inspect and copy DOE records or, if the debtor or his or her representative cannot personally inspect the records, to request and receive a copy of such records which form the basis for the debt determination;
- (e) The debtor's right to obtain a review within the Department on the determination of indebtedness; and
- (f) The debtor's right to offer to make a written agreement to repay the debt.

- (2) Administrative offset may precede the foregoing procedure if failure to take the offset would substantially prejudice the Department's ability to collect the debt, and the time before the payment is to be made does not reasonably permit completion of the procedures. Such prior offset must be promptly followed by the completion of these procedures. Amounts recovered by administrative offset found not to be owed to DOE shall be promptly refunded. For additional information on the required due process procedures, including the process for review within the Department, see 10 CFR 1015 and DOE 2200.6, FINANCIAL ACCOUNTING, Chapter III, "Receivables."

- d. Repayment Agreements. Discretion and sound judgment should be used in determining whether to accept a repayment agreement in lieu of offset. If the debt is delinquent and the debtor has not disputed its existence or amount, a repayment agreement should only be accepted in lieu of offset if the debtor is able to establish that the offset would result in undue financial hardship or would be against equity and good conscience. For additional information on repayment agreements, see 10 CFR 1015 and DOE 2200.6, FINANCIAL ACCOUNTING, Chapter III, "Receivables."
- e. Long Outstanding Debts. When the debt is long outstanding and a considerable effort has been made to collect under the procedures of this paragraph, consideration should be given to the procedures under 4 CFR 103, 104, and 105 (compromise, suspension and termination, and referral).

16. REQUESTS FOR WAIVER OF COLLECTION OF CLAIMS FOR ERRONEOUS PAYMENTS.

a. General.

- (1) The waiver of claims of the United States against a person arising out of an erroneous payment of pay and allowances, and of travel, transportation, and relocation expenses and allowances to an employee is governed by the standards set forth in 4 CFR 91-93.
- (2) The CFO and Heads of Field Elements or a designee may waive claims involving erroneous payments in an amount aggregating not more than \$1,500 and may deny a request for waiver of claims in any amount, but must advise the applicant of his or her right to appeal the denial of a waiver request to the Comptroller General (CG).

- b. Submission. For Headquarters employees, requests for waiver should be submitted to the CFO, through the Office of Headquarters Accounting Operations. For field employees, except employees of the Bonneville Power Administration (BPA), requests for waiver should resubmitted to the Head of their Field Element, or designee, through the Office of Headquarters Accounting Operations if the request involves a pay matter and through the field finance office if the request involves a transportation, travel, or relocation matter. BPA employees shall submit requests for waiver to the Administrator, BPA, or designee.
- c. Statute of Limitations. A request for waiver must be received in the General Accounting Office or in the Office of CFO or Head of the Field Element within 3 years immediately following the date on which the erroneous payment was discovered.
- d. Report of Investigation.
 - (1) Except as provided in paragraph (2) below, a report of investigation to the CFO or Head of Field Element, as appropriate, must be prepared on each waiver request by the Office of Financial Policy for Headquarters employees or the Field CFO for field employees. The report should include:
 - (a) The name and mailing address of the employee requesting waiver, or a statement that the person cannot reasonably be located;
 - (b) The aggregate amount of the claim;
 - (c) The date the erroneous payment was discovered;
 - (d) The date the employee was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice;
 - (e) A statement as to the circumstances under which the erroneous payment was made, the applicant's knowledge of the erroneous payment and the steps the applicant took, if any, to bring the matter to the attention of the appropriate official and the Department's response;
 - (f) A determination as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee and the factual basis for such a determination;
 - (g) A statement as to whether or not the erroneous payment is the subject of an exception made by the Comptroller General of the United States;
 - (h) Legible copies of supporting documents such as leave and earnings statements or travel authorizations and vouchers;
 - (i) Statements of the employee or other interested person; and

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(j) A statement as to the reason the Department believes the erroneous payment occurred and the corrective action taken to prevent the occurrence of similar erroneous payments.

(2) An investigation report is not required in overpayment cases involving \$100 or less where there is no indication in the record of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.

- e. Referral to the Comptroller General. A request for waiver shall be forwarded to the CG when (1) the applicant's request for waiver has been denied by the CFO or Head of Field Element and the employee submits an appeal for forwarding to the CG; (2) the DOE official supports the request for waiver but the claim aggregates more than \$1,500; or (3) the DOE official has doubt as to whether waiver action is proper. The Office of Financial Policy, for Headquarters employees and Heads of Field Elements, or their designees, for field office employees shall prepare the request for CG determination. The request must include an investigative report; copies of pertinent documents; a copy of the Department's decision, if any; and a recommendation for or against waiver or the basis for doubt, and must be signed by the requesting official. The request should be addressed as follows:

Director, Claims Group
General Government Division
U.S. General Accounting Office
Washington, DC 20548

All Departmental submissions to the CG should be sent to the CFO for forwarding to the CG. Comptroller General determinations will be sent directly to the requesting official. Upon receipt, the requesting official shall furnish a copy of the CG determination to the Office of Financial Policy.

- f. Notification of Waiver Action. Written notification of waiver determination and subsequent actions will be sent to the employee. Appropriate action will be taken by the cognizant finance office based on the waiver action.
- g. Refund of Amounts Repaid and Waived. The Department shall refund any amounts repaid and waived provided the employee makes application to DOE for refund within 2 years following the date of waiver.
- h. Suspension of Collection Action and Waiver of Interest and Penalty Charges and Administrative Costs. Collection action may be suspended and interest and penalty charges and administrative costs may be waived pending action on a waiver request based upon appropriate consideration, on a case-by-case basis. See DOE 2200.6, FINANCIAL ACCOUNTING, Chapter III, "Receivables."

17. EMPLOYEE DEBT THAT ARISES AS A RESULT OF AN INSPECTOR GENERAL INVESTIGATION. When an Inspector General (IG) investigation results in a finding that a claim exists against an employee, the following procedures will be followed:
- a. The Inspector General shall provide a report and supporting documentation to the CFO or Head of Field Element at the time the appropriate management official and/or employee is provided same. The report shall include:
 - (1) Name of employee who is subject of investigation and office affected;
 - (2) Name of appropriate management official;
 - (3) Brief description of the basis for the claim; and
 - (4) Amount of claim.
 - b. The Appropriate Management Official, normally the Head of a Departmental Element or designee, shall review the IG report of investigation, provide a written response to the IG report, and as appropriate:
 - (1) Notify the employee in writing of any findings pertaining to a claim against the employee that is included in the IG report of investigation;
 - (2) Refer the employee to the Office of Headquarters Accounting Operations (CR-50) for Headquarters employees, or the appropriate field finance office for field office employees, to make arrangements to repay any related claim; and
 - (3) Immediately contact CR-50 or the appropriate field finance office if the employee challenges the existence or amount of a claim, attempts to make partial payment to settle the claim, requests installment payments, or if it is likely that involuntary repayment will be necessary.
 - c. The CFO and Heads of Field Elements or Designees, in addition to the responsibilities shown at paragraph 7b, shall:
 - (1) Establish a receivable based on a final IG investigative report and appropriate documentation supporting a claim; and
 - (2) Accept and deposit an employee's full and immediate voluntary repayment of a claim.

BY ORDER OF THE SECRETARY OF ENERGY:



DONALD W. PEARMAN, JR.
Acting Director
Administration and Human
Resource Management